

CONSULTANT SERVICES AGREEMENT

Engineering and Project Management On-Call Service Contract

THIS AGREEMENT is made at Fairfield, California, as of February 15, 2017, by and between the City of Fairfield, a municipal corporation (the "CITY") and PONTICELLO ENTERPRISES CONSULTING ENGINEERS INC. ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be for two (2) years, with the ability to extend the agreement for two (2) additional one year terms upon mutual consent of CONSULTANT and CITY'S Public Works Director.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By:  CDM

PONTICELLO ENTERPRISES CONSULTING
ENGINEERS INC.

By: 
ALAN L. MITCHELL, P.E.
PRESIDENT

EXHIBIT "A"

SCOPE OF SERVICE

Project Management

Ponticello Enterprises will assign a Project Manager/Engineer (PM) whose duties and responsibilities are to provide professional services as described in the scope of work. In addition, project support staff may be assigned as needed with the approval of the City.

DEFINITION: PROJECT MANAGEMENT

Project Management for the purposes of this contract is limited to and comprised of the administration of the assigned projects defined in this contract and in no circumstances does it include providing construction management services of construction contractors or inspection of their work product.

Tasks to be performed may include:

1. Meet with stakeholders to discuss desired scope of work and implementation schedule, and identify funding source(s).
2. Identify resources (City staff and Consultants) needed to move forward with the project.
3. Follow City's CIP and Procurement policies regarding required approvals to proceed with project.
4. Collaborate and coordinate the scoping of design projects with appropriate City staff.
5. Prepare "Request for Proposals" (RFPs) in the format provided by City staff, for design consultants, if the design-work for the project is not to be performed "in-house".
6. Coordinate staff review of proposals and prepare "Short List" for oral interviews.
7. Schedule and attend oral interviews.
8. Coordinate meeting with design consultants, other agencies and utilities, and appropriate City staff to finalize design scope and negotiate final estimated fee.
9. Prepare Consultant Services Agreement (CSA) for each contract in the format provided by City staff.
10. Schedule and prepare "Draft" Agenda Report (for Council Approval of CSA in the format provided by City staff.
11. Schedule and attend "Kick-off" meeting for design.
12. Oversee management of project by design consultant.
13. Review and comment on consultant's monthly invoices and forward to appropriate City staff for approval.
14. Coordinate preparation of required environmental review with City staff in Planning Department.
15. Collaborate and coordinate the scoping of construction management services (if necessary).
16. Prepare "Request for Proposals" (RFPs) in the format provided by City staff, for CM consultants, if the work for the project is not to be performed "in-house".
17. Coordinate staff review of proposals and prepare "Short List" for oral interviews.

18. Schedule and attend oral interviews.
19. Coordinate meeting with CM consultants and appropriate City staff to finalize CM scope and negotiate final estimated fee.
20. Prepare Consultant Services Agreement (CSA) for each contract in the format provided by City staff.
21. Schedule and prepare "Draft" Agenda Report (for Council Approval of CSA in the format provided by City staff.
22. Coordinate appropriate City staff review of each consultants work products, (including proposed project schedule, project construction estimates, design memorandum, project plans, and project specifications).
23. Coordinate preparation of project contract documents (including Notice to Contractor, Instruction to Bidders, Proposal and Agreement) in the City of Lincoln's standard format.
24. Coordinate with Utility Companies for necessary services.
25. Coordinate with Building Department, if building permit necessary.
26. Working with staff and design consultant, package complete bid documents for approval and bid call.
27. Assist staff with obtaining authorization to proceed with bid call.
28. Assist staff with bid advertisement, including any pre-bid meeting.
29. Monitor bidder inquiries and coordinate with staff and design consultant for responses.
30. Prepare and issue Addenda (if required) prior to opening of bids.
31. Coordinate opening of bids for each project and review bids to verify responsiveness and responsibility.
32. Prepare "Bid Summary" for each project in the format provided by City staff.
33. Schedule and prepare Agenda Report for "Bid Award" in the format provided by City staff.
34. Coordinate preparation and execution of contractor agreements.
35. Review contractor's insurance and bonds for conformance with the Contract Documents.
36. Schedule and attend Pre-construction meetings for each project with contractor, City staff and appropriate utilities and interested parties.
37. Monitor project budget during construction.
38. Coordinate with the CM and design consultant on closeout of outstanding field issues, completion of documentation, project filing, and final pay quantities, warranties, maintenance manuals, and as-builts.
39. Coordinate with the design consultant on final acceptance of the improvements and completion of record drawings.
40. The PM will coordinate with staff on final acceptance and archiving of project records.

EXHIBIT "B"

PAYMENT

- 1) For and in consideration of Consultant's Services, CITY agrees to pay CONSULTANT for actual fees, costs and expenses for all time and materials expended, but in no event shall total compensation exceed the amounts specified in each Work Order for each Project. The total authorized amount for this Agreement is ONE HUNDRED THOUSAND DOLLARS (\$100,000) which will not be exceeded without Council authorization.
- 2) CONSULTANT shall provide a Scope of Work and Fee Proposal on a project-by-project basis, for review by the CITY. The negotiated Scope and Fee will be the basis for a Work Order for each specific project.
- 3) Payment shall be made to CONSULTANT on a time and materials basis based on the CONSULTANT'S rates, attached with Exhibit B.
- 4) Extra Work performed by the CONSULTANT for any work required by the CITY which is not specified as part of Exhibit A, including but not limited to, any changes to CONSULTANT's Services including but not limited to contract change orders after the award of the construction contract by the City Council, or testimony in Court, shall be compensated by the use of the time and material fee rates of the attached Exhibit "B." No extra work will be compensated for unless required by CITY in writing.
- 5) CONSULTANT shall submit invoices to CITY, Attention: Julie B. Lucido and CITY shall pay CONSULTANT within 30 days of receiving a proper invoice. CONSULTANT shall notify the CITY in writing when the CONSULTANT's invoices total billing is within 25% of the total authorized amount



PONTICELLO ENTERPRISES
CONSULTING ENGINEERS

2017 HOURLY RATE SCHEDULE

ENGINEERING

RATE

**CIVIL
ENGINEERING**



Principal Professional Engineer	\$170.00
City/County Engineer	\$170.00
Senior Project Manager	\$160.00
Senior Civil Engineer/Project Manager	\$150.00
Associate Civil Engineer/Project Engineer	\$130.00

**PUBLIC AGENCY
ENGINEERING**



Assistant Project Manager	\$120.00
Assistant Engineer	\$110.00
Senior Construction Inspector	\$110.00
Construction Inspector	\$95.00

**PROJECT
MANAGEMENT**



Senior Engineering Technician	\$120.00
Junior Engineer/Engineering Technician	\$100.00
Engineering Intern	\$50.00

ADMINISTRATION

**FACILITY
MANAGEMENT**



Office Technician	\$65.00
Word Processor	\$60.00

REIMBURSABLE EXPENSES

**CONSTRUCTION
MANAGEMENT**



- Vehicle Mileage is invoiced at \$0.58/mile
- Expenses and sub-consultants are invoiced at cost plus 10%
- A two- (2) hour minimum charge will be made for all field services. An eight- (8) hour minimum charge will be made for field services in excess of six (6) hours per day. A one- (1) hour minimum charge per day will be made for any office services.
- Vehicle mileage is charged for travel from the CONSULTANT's office.

INSPECTION



The listed rates are for straight time. On certain classifications, overtime will be charged at 1.25 times the standard hourly rates. Sundays and holidays will be charged at 1.6 times the standard hourly rates.

Rate Schedule applicable through December 2017. Hourly rates may be adjusted to compensate for labor cost increases, employee benefits, and other increases due to inflationary trends. Ponticello Enterprises reserves the right on all contracts which incorporate this fee schedule to adjust the hourly rates on January 1st of each year as noted above, without changing any contract expenditure limits or not-to-exceed values.

EXHIBIT "C"

GENERAL PROVISIONS

1) **INDEPENDENT CONSULTANT.** At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) **LICENSES; PERMITS; ETC.** CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) **TIME.** CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) **CONSULTANT NOT AN AGENT.** Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) **ASSIGNMENT PROHIBITED.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) **PERSONNEL.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) **STANDARD OF PERFORMANCE.** CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(c)(2), to the fullest extent allowed by law, CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, to the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11)PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12)LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$_____
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a

current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.